



Department of Defense INSTRUCTION

NUMBER 5505.3

June 21, 2002

IG, DoD

SUBJECT: Initiation of Investigations by Military Criminal Investigative Organizations

- References:
- (a) DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," July 11, 1986 (hereby canceled)
 - (b) [DoD Directive 5106.1](#), "Inspector General of the Department of Defense," January 4, 2001
 - (c) [DoD Instruction 5505.2](#), "Criminal Investigations of Fraud Offenses," July 16, 1990
 - (d) Inspector General, Department of Defense Memorandum, "Revised Interim Guidance for Criminal Investigations of Fraud Offenses Jurisdiction," November 30, 2000
 - (e) [DoD Instruction 5505.8](#), "Investigations of Sexual Misconduct by the Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations," June 6, 2000
 - (f) [DoD Directive 7050.5](#), "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," June 7, 1989

1. REISSUANCE AND PURPOSE

This Instruction:

- 1.1. Reissues reference (a) under the authority of reference (b).
- 1.2. Continues to implement DoD policy and update responsibilities and procedures under reference (b) to ensure the independence, objectivity, and effectiveness of the Military Criminal Investigative Organizations (MCIOs).

2. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

3. DEFINITIONS

3.1. Commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a "command." For purposes of this Instruction, all references to "commander" also include the civilian Head of a DoD or Service organization who is not assigned to an MCIO and is authorized to request an investigation or act on the results of an investigation by an MCIO.

3.2. Military Criminal Investigative Organizations (MCIOs). The U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.

4. POLICY

This Instruction implements the DoD policy established in reference (b) for the MCIOs to initiate investigations.

5. RESPONSIBILITIES

5.1. The Office of the Inspector General, Department of Defense shall develop policy and procedures for MCIO initiation of investigations as prescribed in reference (b) and within the guidelines of references (c), (d), and (e).

5.2. The Heads of the DoD Components shall ensure compliance with and prescribe procedures implementing this Instruction.

5.3. Commanders at All Levels shall ensure that criminal allegations or suspected criminal allegations involving persons affiliated with the Department of Defense or any property or programs under their control or authority are referred to the appropriate MCIO or law enforcement organization.

6. PROCEDURES

6.1. Under authority of references (b), (c), (d), and (e), the MCIOs may initiate criminal investigations. However, the MCIO Commanders are not required to solicit, nor shall they solicit from the commanders outside the MCIO, requests or authorizations to initiate investigations. This does not prevent MCIOs from discussing with commanders the initiation of a criminal investigation. In each case, the decision to initiate a criminal investigation remains with the MCIO. Additionally, any commander or the Inspector General, Department of Defense (IG, DoD) may request that an MCIO initiate a criminal investigation.

6.2. Only the Secretary of a Military Department may direct an MCIO to delay, suspend, or terminate an investigation other than an investigation being conducted at the request of the IG, DoD. Only the IG, DoD, may direct an MCIO to delay, suspend, or terminate an investigation being conducted at the direction of the IG, DoD.

6.3. When a commander not assigned to the MCIO objects to the initiation of a criminal investigation, for operational or other reasons, that commander shall report the circumstances immediately through the chain of command to the Secretary of the Military Department concerned. Intermediate commanders may resolve those matters, which were the basis for the objection and, thereby, allow the investigation to proceed.

6.3.1. Investigations Initiated By an MCIO. When there is a request to delay, suspend or terminate an investigation initiated by the MCIO, the Secretary of the Military Department concerned shall decide promptly whether the investigation shall be discontinued. No investigation shall be delayed or suspended while this process is ongoing, except by decision of the Secretary of the Military Department concerned. The Secretaries of the Military Departments shall report promptly to the IG, DoD, the facts in all cases brought to them for resolution and their decision in each instance.

6.3.2. Investigations Initiated By or At the Direction of the IG, DoD. When an investigation by an MCIO has been directed by the IG, DoD, the Secretary of the Military Department concerned shall refer promptly to the IG, DoD, any request brought to the Secretary of the Military Department concerned to delay or discontinue such investigation. The IG, DoD, shall make a prompt decision on those matters and inform the Secretary of the Military Department concerned.

6.4. The Commanders not assigned to the MCIOs shall not impede an investigation or the use of investigative techniques that an MCIO considers necessary and that are permissible under law or regulation. MCIO Commanders shall report promptly through

their chain of command to the Secretary of the Military Department concerned the facts in all situations where attempts are made to impede an investigation or the use of investigative techniques.

6.4.1. Investigations Initiated by an MCIO. The Secretary of the Military Department concerned shall resolve promptly those matters stated in paragraph 6.4., above, and provide the IG, DoD, with a copy of the report and the resolution of all such cases brought to the Secretary of the Military Department concerned.

6.4.2. Investigations Initiated By or At the Direction of the IG, DoD. The Secretary of the Military Department concerned shall provide promptly a copy of the report to the IG, DoD. The IG, DoD, and the Secretary of the Military Department concerned shall resolve those matters stated in paragraph 6.4., above.

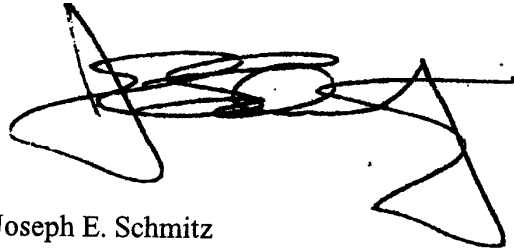
6.5. The MCIOs shall advise the applicable commanders of the initiation and status of investigations, in accordance with the provisions of references (c), (d), and DoD Directive 7050.5 (reference (f)), and applicable regulations of the Military Department concerned.

6.6. In accordance with reference (e), an investigation into adult private consensual sexual misconduct may be initiated by an MCIO without a request from the Service member's commander only upon the determination of the Commander or Director of the MCIO or Principal Deputy that there is credible information of adult private consensual sexual misconduct, and that such an investigation is an appropriate use of investigative resources.

6.7. MCIO requests for resources, personnel, or facilities, not under the MCIO's command or control, which the MCIO needs to accomplish their mission, shall be coordinated through normal command and resource processes for approval of the commander having responsibility for the requested resources.

7. EFFECTIVE DATE

This Instruction is effective immediately.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, positioned above the printed name.

Joseph E. Schmitz
Inspector General, Department of Defense